



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

5636 Southern Boulevard
Virginia Beach, VA 23462
www.deq.state.va.us

Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
(757) 518-2000

STATE WATER CONTROL BOARD ENFORCEMENT ACTION

SPECIAL ORDER BY CONSENT WITH CAPT. FISH'S STEAMING WHARF, INC. Permit No. VA0054003

SECTION A: Purpose

This is a Consent Special Order issued under the authority of §62.1-44.15(8a) and §62.1-44.15(8d) of the Code of Virginia, between the State Water Control Board and Capt. Fish's Steaming Wharf, Inc. for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in the Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in the Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "CFSW" means Capt. Fish's Steaming Wharf, Inc. a corporation certified to do business in Virginia and its affiliates, partners, subsidiaries, and parents.
7. "TRO" means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
8. "Regulation" means 9 VAC 25-31-10 *et seq.* - Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation.
9. "Permit," means VPDES Permit No. VA0054003.

SECTION C: Findings of Fact and Conclusions of Law

1. Capt. Fish's Steaming Wharf, Inc. (CFSW) owns and operates a wastewater treatment plant (WWTP) in Chincoteague, VA, which currently services a 125-seat restaurant, and is subject to VPDES Permit No. VA0054003. The Permit became effective on November 5, 2001 and expires November 5, 2006. The Permit authorizes CFSW to discharge, in accordance with the effluent limitations, wastewater to Chincoteague Channel, which is connected to the Atlantic Ocean.
2. §62.1-44.5.A of the Code, §9 VAC 25-31-50.A.1 of the Regulation and Part II.F.1 of the Permit state "Except in compliance with a permit...issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances."
3. Part I.A.1 of the Permit requires CFSW to comply with effluent limits established by the Permit. Part II.L of the Permit states: "The permittee must comply with all conditions of the permit."
4. Part I.C.4 of the Permit states "Future changes to the facility must be addressed by the submittal of a revised Operations and Maintenance (O&M) Manual within 90 days of the changes."
5. TRO records document 18 permit effluent limit exceedances between April 2003 and November 2003 at the CFSW WWTP. These exceedances include violations of effluent limits for total suspended solids, fecal coliform, and total kjeldahl nitrogen.
6. The expansion of the WWTP was completed in July 2002. A revised O&M Manual was submitted within the 90-day deadline; however, the O&M Manual was substantially incomplete and was not approved by DEQ. On June 27, 2003, DEQ issued Warning Letter No. W2003-06-T-1011 to CFSW for not submitting a complete O&M Manual. DEQ has not received a complete O&M Manual to date. CFSW has been operating the WWTP without an approved O&M Manual from July 2002 through November 2003.
7. On September 30, 2003, DEQ issued CFSW Notice of Violation No. W2003-09-T-0004 for exceeding the effluent limits established by the Permit and for not submitting a complete O&M manual within the deadline established by the Permit.
8. For the October 2003 reporting period, CFSW manually manipulated the equalization basin pumps at the WWTP to prevent wastewater surges into the aeration basin, augmented the biomass with artificial food and seed sludge, and was able to meet the Permit effluent limits. The WWTP operates from the beginning of April to the end of November every year and shuts down after Thanksgiving. Any sewage that collects in the system while the WWTP is shut down is pumped and hauled offsite.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in VA Code § 62.1-44.15(8a) and (8d), orders CFSW, and CFSW agrees, to:

1. Voluntarily pay a civil charge of \$4,500 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. The payment shall include CFSW's Federal Identification Number and shall note on its face that the payment is being made in accordance with the requirements of this Order. Payment shall be made by check, certified check, money order, or cashier's check payable to the "Treasurer, Commonwealth of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240.

2. By March 12, 2004, submit to TRO, for its review and approval a corrective action plan and schedule addressing the effluent limit violations noted above. Upon its approval said plan and schedule shall become a part of and enforceable under the terms of this Order. The plan shall include, at a minimum, implementation of the actions described in paragraph 8 above, on a regular basis, unless or until said measures are replaced by other approved measures to ensure compliance with permit effluent limits.
3. Within thirty days of the approval of the measures described in paragraph 2 above, submit an approvable revised O&M Manual to the TRO office for review and approval.
4. All submittals and reports required by this section shall be mailed to:
Francis L. Daniel
Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of CFSW, for good cause shown by CFSW, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein, including those matters addressed in the Notice of Violation issued to CFSW by DEQ on September 30, 2003. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent

remediation of the WWTP as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.

3. For purposes of this Order and subsequent actions with respect to this Order, CFSW admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. CFSW consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. CFSW declares it has received fair and due process under the Administrative Process Act, Va. Code §§2.2 - 4000 *et seq.*, and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by CFSW to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. CFSW shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. CFSW shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. CFSW shall notify the DEQ Regional Director in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which CFSW intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on CFSW, its successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and CFSW. Notwithstanding the foregoing, CFSW agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until CFSW petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. In addition, the Director or the Board may terminate this Order, for good cause upon 30 days' written notice to CFSW. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve CFSW from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
12. By its signature below, CFSW voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of June 21, 2004.

Francis L. Daniel

Francis L. Daniel, Tidewater Regional Director, for
Robert G. Burnley, Director
Department of Environmental Quality

CFSW voluntarily agrees to the issuance of this Order.

By: [Signature]

Date: 2/27/04

Commonwealth of Virginia

City/County of Chincoteague, VA

The foregoing document was signed and acknowledged before me this 27 day of
FEBRUARY, 2004, by RAYMOND LENON BRITTON, JR., who is
(name)

SECRETARY
(title)

of Capt. Fish's Steaming Wharf, Inc., on behalf of the Corporation.

Cathy L. Francis
Notary Public

My commission expires: MARCH 31, 2005